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OFFICE OF THE CHIEF OF NAVAL OPERATIONS
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From: Chief of Naval Operations
To: Distribution

Subj: Information Concerning Department of Defense (DOD) and Environmental Protection Agency (EPA) Memorandum of Understanding (MOU) for Implementing the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 or "Superfund" Law

Ref: (a) CNO ltr Ser 451/3U392830 of 2 Aug 1983
(b) OPNAVINST 5090.1 of 26 May 1983

Encl: (1) MOU between DOD and EPA for Implementation of P.L. 96-510, CERCLA

1. Reference (a) promulgated Navy policies and specific procedures and responsibilities concerning clean up of Navy generated hazardous wastes (HW) at off-station civilian owned/operated disposal sites, in amplification of reference (b).

2. Enclosure (1), a recently signed MOU between EPA and DOD concerning implementation of P.L. 96-510, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, is forwarded for information. It should be noted that nothing in enclosure (1) is inconsistent with the policies of references (a) and (b). Additional information concerning enclosure (1) can be obtained from Mr. Carl Zillig, OP-451, at Autovon 227-3668 or 3689.

S. A. Martinelli
S. A. MARTINELLI
By direction

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MEMORANDUM OF UNDERSTANDING
BETWEEN
THE DEPARTMENT OF DEFENSE
AND
THE ENVIRONMENTAL PROTECTION AGENCY
FOR THE
IMPLEMENTATION OF P.L. 96-510
THE COMPREHENSIVE ENVIRONMENTAL RESPONSE,
COMPENSATION, AND LIABILITY ACT OF 1980 (CERCLA)

1. PURPOSE

The Department of Defense (DOD) and the Environmental Protection Agency (EPA) are entering into this agreement to clarify each Agency's responsibilities and commitments for conducting and financing response actions authorized by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and specifically delegated by Executive Order 12316.

This agreement does not redelegate any responsibilities set out in Executive Order 12316. Rather, it clarifies respective operational roles, responsibilities, and procedures, consistent with the applicable provisions of Executive Order 12316 and Executive Order 12088. This agreement does not create any substantive or procedural rights in other parties, does not affect enforcement rights and remedies with regard to any party, and is intended only for Federal administrative purposes of EPA and DOD.

These responsibilities and procedures are guided by the following:

- DOD facilities are defined as government-owned, government-operated facilities controlled by DOD; and government-owned land controlled by DOD that is either contractor-operated or leased to other parties.
- DOD is generally responsible for financing actions taken in response to releases from DOD facilities, or assuring that another party finances such actions.
- DOD and EPA will conduct response actions consistent with response procedures established by the National Oil and Hazardous Substances Pollution Contingency Plan (NCP).
- At DOD's request and in its discretion, EPA will provide DOD with technical assistance to support the response actions conducted by DOD.
- Civil works activities of the Department of Army Corps of Engineers are not subject to the terms of this agreement.

DOD will consult with EPA concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

ENCLOSURE

2. BASIS OF AGREEMENT

CERCLA provides a comprehensive framework for response to the release or potential release of hazardous substances, pollutants, and contaminants.

Section 104 of CERCLA and Executive Order 12316 place authority for responding to releases from DOD facilities with the Secretary of Defense. These response actions must be conducted in accordance with the NCP as amended by EPA under section 105 of CERCLA.

3. RESPONSIBILITIES AND RESPONSE PROCEDURES

For purposes of this agreement, releases of hazardous substances are divided into three categories: -

- Releases from current DOD facilities;
- Releases from former DOD facilities; and
- Other releases for which DOD is a responsible party.

For each category, section 3 describes procedures to be followed by DOD and EPA in determining which Agency will conduct and/or finance the response action consistent with CERCLA, the requirements of Executive Order 12316, and the NCP. At DOD's request and in its discretion, EPA will provide technical assistance or serve in an advisory role when DOD conducts a response.

3.1 Releases from Current DOD Facilities

a. Current DOD facilities with on-facility contamination and no off-facility contamination

When there is contamination on a current DOD facility and no off-facility contamination, DOD will conduct and finance the response action or assure that another party does so. At DOD's request, EPA will provide technical assistance or serve in an advisory role. This section does not apply to releases for which DOD is not a responsible party under section 107(b) of CERCLA (e.g., "midnight dumping").

b. Current DOD facilities with off-facility contamination

When there is off-facility contamination and clear evidence that a current DOD facility is the sole source, DOD will conduct and finance the response action or assure that another party does so. At DOD's request, EPA will provide technical assistance to DOD or serve in an advisory role.

When there is off-facility contamination and no clear evidence that a DOD facility is the sole source, EPA will finance and conduct investigations and studies off-facility to determine the source and extent of the contamination and recommended response action. DOD will finance and conduct investigations and studies on the DOD facility to determine the source and extent of the contamination and the recommended response action. DOD and EPA will

coordinate these efforts and resulting decisions to minimize costs and duplication of activities, and will exchange all reports, studies, and other relevant site information.

If, after DOD and EPA review these investigations, it is determined that the current DOD facility is the sole source of the contamination, DOD will conduct and finance the response action or assure that another party does so and will reimburse EPA for costs EPA expended at the site.

If, after DOD and EPA review these investigations, it is determined that the current DOD facility is one of two or more sources of the contamination, EPA and DOD will jointly determine the most appropriate response and financing methods.

3.2 Releases From Former DOD Facilities

a. Releases from former DOD Facilities, when DOD is the sole responsible party

If EPA, in consultation with DOD, determines that a former DOD facility is the sole source of the contamination, DOD will finance any response action, including off-facility response actions, or will assure that another party does so. If EPA agrees, DOD may choose to conduct the response action. If EPA conducts the response action, DOD will reimburse the Hazardous Substance Response Trust Fund (Fund) for the action. EPA concurrence is required before DOD conducts a response action.

In cases where DOD disagrees with the determination of responsibility, proposed action, or its cost, DOD may use the dispute resolution section of this agreement.

b. Releases from former DOD facilities, when DOD is one of two or more responsible parties.

If EPA, in consultation with DOD, determines that DOD is one of two or more parties responsible for the contamination, EPA will conduct and finance the response action and EPA, in consultation with DOD, will determine the appropriate response costs. DOD will reimburse EPA that amount.

If EPA agrees, DOD may choose to conduct the response action. If EPA conducts the response action, DOD will reimburse the Fund for the action. EPA concurrence is required before DOD conducts a response action.

In cases where DOD disagrees with the determination of responsibility, proposed action, or its cost, DOD may use the dispute resolution section of this agreement.

3.3 Other Releases for Which DOD is a Responsible Party

When there is a release for which DOD is a responsible party, and which does not involve a current or former DOD facility, EPA will investigate the need for a response action, and the extent of responsibility of different

parties for the release, including DOD's responsibility. EPA, in consultation with DOD, will determine the appropriate response costs and DOD will reimburse EPA that amount. If EPA agrees, DOD may choose to conduct the response action for the portion of the release for which it is responsible. EPA concurrence is required before DOD conducts a response action.

For releases from DOD vessels, including vessels owned or bareboat chartered and operated, DOD and EPA will jointly determine the most appropriate response.

In cases where DOD disagrees with the determination of responsibility, proposed action, or its cost, DOD may use the dispute resolution section of this agreement.

4. FUNDING OF RESPONSE

DOD will request sufficient funds in its budget to pay for response actions programmed by the Department under this agreement. DOD will ensure that projects in this budget program are listed in the same manner as other environmental projects under OMB Circular A-106.

When EPA undertakes a response for which DOD is responsible under CERCLA, DOD will reimburse the Fund for its share. Where funds are not immediately available for reimbursement, DOD's next fiscal year budget request will include a request for Fund reimbursement. Provisions of this agreement for payment by DOD shall not be construed as affecting the particular source of appropriations for payment by the government, including special appropriations or 31 U.S.C. 724a.

Any commitment of funds is subject to the availability of appropriations.

Each Agency will maintain records of all costs incurred which may involve payments to or from the Fund and will provide documentation of these costs at the other Agency's request.

5. COMMUNITY RELATIONS

When EPA undertakes a response action, EPA will be responsible for establishing a community relations program for the site, as specified in the Guidance for Implementing the Superfund Program (Part III, Section 4).

When DOD undertakes a response action, DOD will be responsible for providing information to the local community.

For EPA and DOD actions at the same site, EPA and DOD will conduct a joint community relations program.

6. EXCHANGE OF INFORMATION

DOD and EPA will exchange information on a regular basis. EPA and DOD will inform each other at the earliest possible stage of any evidence of contamination, types of contamination, and potential actions. EPA and DOD will

keep each other informed regarding the type and availability of data or information. Such data or information will be made available upon request, subject to Agency-technical or peer review. Upon request and following Agency technical or peer review, DOD and EPA will submit drafts of specific technical reports to each other for review. Review comments will be addressed in final reports.

Agency technical or peer review will be expedited when information is requested. All requests for data or information will be responded to within ten working days of the request.

EPA and DOD will notify each other prior to providing the other Agency's information or data to another party. All confidential business information exchanged under this agreement is subject to procedures set forth at 40 CFR Part 2.

This section applies to information related to all releases under section 3 of this agreement, including releases under section 3.1.

7. RESOLUTION OF INTERAGENCY CONFLICTS

Any conflict arising under this agreement will be resolved at successive levels of Agency decisionmaking until agreement is reached. The EPA Regional Administrator and the Commanding Officer of the Defense Component Major Command in question will first attempt to resolve any disputes. Failing resolution, the EPA Assistant Administrator for Solid Waste and Emergency Response and the appropriate Military Department Assistant Secretary will attempt to reach agreement. If this is unsuccessful, the matter will be referred to the EPA Administrator and the Secretary of Defense.

The dispute resolution process is not a substitute for necessary and timely removal actions, and each Agency reserves rights otherwise provided by law to pursue any response or enforcement actions.

8. MULTIPARTY AGREEMENTS

Where appropriate, EPA Regional Offices and DOD installations may enter into agreements with State and local authorities regarding response actions. Such agreements must be consistent with this agreement, except that dispute resolution sections of such agreements may supersede section 7 of this MOU.

9. AMENDMENTS

This agreement may be amended at any time by mutual agreement of EPA and DOD. Amendments will be in writing, and will be signed by appropriate DOD and EPA officials.

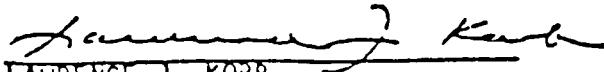
10. PERIOD OF AGREEMENT

Unless ended or extended by mutual agreement, this MOU will continue in effect until December 1, 1985. This agreement may be terminated upon notifi-

- cation by either DOD or EPA to the other party. A minimum of ninety days' advance written notice of termination is required.

11. EFFECTIVE DATE

- . This agreement will become effective upon signature of both parties.



LAWRENCE J. KORB
Assistant Secretary of Defense
(Manpower, Reserve Affairs and
Logistics)



LEE M. THOMAS
Assistant Administrator
Office of Solid Waste and Emergency
Response

Date: 8/12/83

Date: 8/12/83